

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 SHAWN FLYNN,

5 Plaintiff,

6 vs.

7 JAMES DZURENDA, et. al.

8 Defendants.
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2:19-cv-00213-MMD-CLB

10 **ORDER**

11 Plaintiff Shawn Flynn ("Flynn") filed a motion for leave to file an amended
12 complaint. (ECF No. 39). Flynn, who was previously representing himself pro se, seeks
13 to amend his complaint, through his court-appointed counsel, to address prior issues
14 with the complaint and to add certain claims. Flynn's case is one of several civil actions
15 that have been consolidated for purposes of discovery and litigation related specifically
16 to whether current and/or former employees of the NDOC violated the civil rights of
17 inmates by failing to treat their Hepatitis C ("Hep-C"). See Case No. 3:19-cv-00577-
18 MMD-CLB.
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20 Defendants oppose this motion asserting that it violates a stay in place pursuant
21 to prior orders of the court related to the consolidated case. (ECF No. 40). In the
22 alternative, Defendants argue that even if there is no stay, the request to amend the
23 complaint is premature because the court has yet to rule on a motion to certify a class
24 related to the claims surrounding Hep-C treatment in Nevada state prisons. (*Id.*)
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26 In reply, Flynn argues there is no stay in place at this time and therefore the
27 amendment to the complaint is not premature. (ECF No. 41).
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1 Having reviewed the parties' filings and the court's previous orders in both this
2 case and the consolidated Hep-C matter, the court denies Flynn's motion without
3 prejudice to re-file after the court rules on the motion for class certification.

4 **I. DISCUSSION**

5 On February 5, 2019, Flynn filed an application to proceed in forma pauperis
6 seeking to file his complaint, which alleged various claims under the Eighth Amendment,
7 American with Disabilities Act, Rehabilitation Act, and state torts. (ECF No. 1, 1-1).
8 These claims all arose from the failure of employees at the NDOC to provide treatment
9 to Flynn for his Hep-C. (*Id.*) The court screened Flynn's complaint on March 8, 2019,
10 which permitted some claims to proceed and dismissed his claim for negligent infliction
11 of emotional distress. (ECF No. 5). Ultimately, the court appointed pro bono counsel to
12 represent Flynn in this matter. (ECF No. 31).

13 By the summer of 2019, numerous civil cases had been filed by inmates housed
14 at the NDOC, who also alleged that their rights were violated due to the failure of NDOC
15 and its employees to provide treatment for Hep-C. Recognizing the common issues of
16 law and fact presented by these various cases, the court stayed discovery in these
17 matters and consolidated the lawsuits for purposes discovery and litigation related to the
18 common issues. (*See In Re: HCV Prison Litigation*, Case No. 3:19-cv-00577-MMD-CLB,
19 ECF No. 1.) The express purpose of the consolidation of these matters was to
20 consolidate the efforts of all parties related to litigation involving Hep-C cases in order to
21 conserve both the parties and the court's time and resources in handling these matters.

22 In Pre-Trial Order #1 in the consolidated matter, the court set an initial case
23 management conference and directed the parties to meet and confer regarding a
24 process to be used to handle discovery and other outstanding issues related to the
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1 cases. (*Id.*, at ECF No. 1). At the initial case management conference, the court was
2 advised that the plaintiffs intended to file a motion to certify a class action and to file an
3 amended class action complaint. (*Id.*, at ECF No. 2). The court inquired of all parties
4 related to this procedure and no objection was raised. The court then set a briefing
5 schedule for the filing of the motion to certify as well as filing the amended complaint.
6 (*Id.*) The court also stayed all discovery pending the next pretrial conference.
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8 At the second pretrial conference, the court partially lifted the discovery stay for
9 the consolidated actions to permit limited document discovery to proceed. (*Id.*, at ECF
10 No. 8). However, the discovery stay remained in place in other respects. In addition, the
11 court also requested, and ultimately received, the withdrawal of various outstanding
12 motions in several of the consolidated actions. (*Id.*) Consistent with the purpose of
13 consolidation, the withdrawal of these motions was to ensure that efforts were not being
14 duplicated by to parties and to allow the parties and the court to focus on the issues
15 raised in the motion to certify prior to the court addressing such things as prior filed
16 motions to amend, motions to dismiss, motions for summary judgment and the like.
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18 Flynn now moves to file a second amended complaint in order to cure certain
19 defects that may be present in the current complaint in this case. (ECF No. 39).
20 However, the court agrees with the defendants that this motion is premature. Currently
21 pending before the court is a motion to certify a possible class action expressly related to
22 the various consolidated cases, which includes a joint amended complaint for class
23 action relief. (See *HCV Prison Litigation*, ECF No. 11). If that motion is granted, Flynn
24 will have the option to join in that lawsuit negating the need for an amended complaint in
25 the current lawsuit. On the other hand, if the motion is denied or if Flynn chooses not to
26 participate in the class, the filing of a motion to amend would then be appropriate.
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1 However, until that time, the current motion is premature. Therefore, the court denies
2 Flynn's motion for leave to file an amended complaint, (ECF No. 39), without prejudice to
3 re-file after a decision is made with respect to the motion to certify in the consolidated
4 action.

5 **II. CONCLUSION**

6 **IT IS THEREFORE ORDERED** that Flynn's motion seeking to leave to file an
7 amended complaint (ECF No. 39) is **DENIED without prejudice**.
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9 **DATED:** January 31, 2020.

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12 **UNITED STATES MAGISTRATE JUDGE**
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